

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

KAY KILGORE, d/b/a L&K, Inc. / Bebb's
Flowers,

Plaintiffs,

v.

HORTICA INSURANCE & EMPLOYEE
BENEFITS,

Defendants.

Case No. CIV-15-214-RAW

ORDER & OPINION

Before the court is Plaintiff's motion to remand [Docket No. 7]. Plaintiff informs the court that although she prayed for a judgment in excess of \$75,000.00 in her state court petition, because of various factors, including Defendant's partial payment of her claim, the amount in controversy no longer exceeds \$75,000.00. Plaintiff includes an affidavit by her counsel in support of her motion. Defendant argues that diversity jurisdiction existed at the time of removal and that it cannot be destroyed by later acts, including Plaintiff's counsel's affidavit. Plaintiff did not file a reply.

Pursuant to 28 U.S.C. § 1332, federal courts have jurisdiction over actions between diverse parties where an amount greater than \$75,000.00 is in controversy. The amount in controversy is determined by the allegations in the petition, and when they are not dispositive, by the allegations in the notice of removal. Laughlin v. Kmart Corp., 50 F.3d 871, 873 (10th Cir. 1995) (abrogated on other grounds). As noted above, Plaintiff prayed for judgment in excess of the \$75,000.00 in her petition, thereby establishing the jurisdictional amount in controversy.

The question then is whether later acts can destroy jurisdiction. “Once jurisdiction has attached, events subsequently defeating it by reducing the amount in controversy are unavailing.” Miera v. Dairyland Ins. Co., 143 F.3d 1337, 1340 (10th Cir. 1998). The Supreme Court has held that “events occurring subsequent to removal which reduce the amount recoverable, whether beyond the plaintiff’s control or the result of his volition, do not oust the district court’s jurisdiction once it has attached.” St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 293 (1938). Accordingly, Plaintiff’s motion [Docket No. 7] is hereby DENIED.

IT IS SO ORDERED this 29th day of September, 2015.

A handwritten signature in cursive script, reading "Ronald A. White".

**THE HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA**